

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

JOSE VENTURA BENAVIDEZ, #19814-051,

Plaintiff,

)

)

v.

)

3:06-CV-0509-L

)

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DAN JOSLIN, Warden,

Defendant.

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)

**FINDINGS, CONCLUSIONS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to the provisions of 28 U.S.C. § 636(b), and an order of the District Court in implementation thereof, the subject cause has been referred to the United States Magistrate Judge. The findings, conclusions and recommendation of the Magistrate Judge are as follows:

FINDINGS AND CONCLUSIONS:

This is an action brought by a federal inmate purportedly pursuant to 28 U.S.C. § 2241.

When Plaintiff filed the petition, he was confined within the Bureau of Prisons at FCI Seagoville in Seagoville, Texas. (See Petition at 1). His whereabouts are presently unknown.

On March 28, 2006, the Court filed an order construing the habeas corpus petition as a civil action, which is subject to the \$250 filing fee provision, and requiring Plaintiff to submit \$245, the balance of the filing fee, or a motion to proceed *in forma pauperis*. On April 13, 2006, the order was returned to the Court as undeliverable. During the last month, Plaintiff has failed to contact the Court or to notify it of his new address. The Court is not required to delay disposition in this case until such time as Plaintiff provides his current address.

Rule 41(b), of the Federal Rules of Civil Procedure, allows a court to dismiss an action *sua sponte* for failure to prosecute or for failure to comply with the federal rules or any court

order. Larson v. Scott, 157 F.3d 1030, 1031 (5th Cir. 1998). "This authority [under Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." Boudwin v. Graystone Ins. Co., Ltd., 756 F.2d 399, 401 (5th Cir. 1985) (citing Link v. Wabash R.R. Co., 370 U.S. 626 (1962)).

RECOMMENDATION:

For the foregoing reasons, it is recommended that the complaint be dismissed without prejudice for want of prosecution pursuant to Rule 41(b), Federal Rules of Civil Procedure. A copy of this recommendation will be mailed to Plaintiff at his last known address.

Signed this 16th day of May, 2006.



WM. F. SANDERSON, JR.
UNITED STATES MAGISTRATE JUDGE

NOTICE

In the event that you wish to object to this recommendation, you are hereby notified that you must file your written objections within ten days after being served with a copy of this recommendation. Pursuant to Douglass v. United Servs. Auto Ass'n, 79 F.3d 1415 (5th Cir. 1996) (*en banc*), a party's failure to file written objections to these proposed findings of fact and conclusions of law within such ten-day period may bar a *de novo* determination by the district judge of any finding of fact or conclusion of law and shall bar such party, except upon grounds of plain error, from attacking on appeal the unobjected to proposed findings of fact and conclusions of law accepted by the district court.